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No. 95-1930

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

GENERAL MOTORS CORPORATION,
Petitioner,

v.

CITY OF LINDEN, THE ASSESSOR OF LINDEN, AND RICHARD CHAIKEN, AGENT, SERVANT OR EMPLOYEE OF LINDEN,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

In opposing the petition in this case, respondents pointedly do not deny that the issues presented here are important and recurring ones.[1] They also do not deny that New Jersey provides no remedy against individual state officials who are responsible even for intentional violations of the Constitution. And they nowhere take issue with our demonstration (at Pet. 19-20) that GM's Section 1983 action will not interfere in any respect with New Jersey's system of tax administration. Instead, respondents insist that New Jersey's procedures, with all of their defects, are "adequate" as a matter of federal law. As we explain below, this contention is insupportable.

1. At the outset, we note that respondents' (largely erroneous) factual assertions are entirely beside the point. The courts below decided this case on the express assumption — agreed to by *all* of the parties at *all* levels of the proceedings — that GM's factual allegations are correct. In fact, the case was initially decided by the trial court, at respondents' insistence, on motions for summary judgment based on respondents' agreement to accept the truth of all of GM's factual allegations made in the "complaint, amended complaint, responses to interrogatories or as alluded to by GM's counsel." Memorandum of Law of Defendant, Richard Chaiken, in Support of Motion to Dismiss 1; see Reply Brief of Defendants City of Linden and the Tax Assessor of Linden in Support of Their Motion for Summary Judgment 1.

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[1] Indeed, since the petition for certiorari was filed in this case the Supreme Court of North Carolina has held that a taxpayer may proceed under Section 1983 in state court to challenge the constitutionality of a state tax. *Edward Valves, Inc.* v. *Wake County*, 471 S.E.2d 342 (N.C. 1996). In addition, another petition presenting an issue closely related to the one here is now pending before the Court. *Hogan* v. *Wisconsin Dept. of Revenue*, No. 95-1979 (filed June 7, 1996).

On the basis of this agreement by respondents, the trial court stayed discovery at a very early stage (PA 65A-66A),[2] and GM did not amend its complaint to include, among other things, the subsequent admission in 1989 by the Mayor of the City of Linden about the City's retaliatory motive for the added property tax assessment imposed on GM in 1986 (Pet. App. 33a).[3] In deciding respondents' motions for summary judgment, therefore, the trial court did not address "the merits of General Motors' factual allegations [which] have neither been briefed nor argued." PA 66A. Instead, the court accepted GM's factual allegations as true and decided only the pure questions of law raised by respondents' motions, including the question presented by the petition in this case: whether the Law Division must adjudicate GM's Section 1983 claim. PA 65A; Pet. App. 31a-33a. Both the Appellate Division and the New Jersey Supreme Court also accepted GM's factual allegations as true for purposes of deciding whether GM may bring this Section 1983 action. Pet. App. 3a, 17a.

Thus, the courts below accepted as true the following facts supporting GM's claim of unconstitutional retaliation by respondents: (1) GM "was treated in a discriminatory

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[2] GM acquiesced in the discovery stay based on the parties' agreement, and the Law Division's assurance, that respondents' motions would raise only legal — not factual — issues. The Law Division accepted GM's argument that, if the case were allowed to proceed in that court, GM "should be given the opportunity to have discovery and to brief and argue the facts which it alleges demonstrates a conspiracy and bad faith." PA 67A.

[3] In light of the agreement by respondents to accept all of GM's factual allegations made in *any* pleading or brief and the forbearance of GM in not amending its complaint in deference to respondents' proposed summary judgment motions, the suggestion now by respondents (Br. in Opp. 6) that GM's complaint was somehow deficient is both misleading and patently inappropriate.

manner with respect to [the] added assessment imposed in 1986 after its facility was gutted and remodeled;" (2) "no other property in the City was reevaluated when [GM's] facility received a new assessment and * * * this clearly demonstrates that it was improperly singled out by the City;" and (3) "the City's Mayor * * * stated [to GM representatives] that '[t]he additional increased assessment was placed on the General Motors' plant because [GM] filed the tax appeal.'" Pet. App. 32a-33a.[4]

In light of this admission by the Mayor — which must be accepted as true for purposes of deciding this case — and

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[4] In their partisan rendition of the facts (Br. in Opp. 1-4), respondents fail to acknowledge that virtually all of the renovations to GM's facility during the 12 months following August 1985 involved *nontaxable* personal property: machinery and equipment. As respondents note (Br. in Opp. 4), GM has objected to the inclusion of this nontaxable property in the calculation of the 1986 added assessment. But respondents fail to note that this was one of the bases on which GM prevailed in the Appellate Division regarding the City's 1983-1985 assessments. Indeed, respondents make the astonishing assertion (*id.* at 5) that it was "highly misleading" for GM to state (Pet. 2) that its "position was vindicated on appeal when the Appellate Division * * * reversed the Tax Court decision and remanded for reconsideration." In fact, contrary to respondents' bald assertion, the Appellate Division reversed the Tax Court's decision to include the facility's so-called "fitups, that is, its paint booths, paint ovens, conveyor assemblies, water processing system, welder water system, auto fluid fills, * * *," in its calculation of the plant's value. *General Motors Corp.* v. *City of Linden*, 13 N.J. Tax 324, 325-326 (App. Div.) (per curiam), certif. denied, 134 N.J. 561 (1993). The court held that "some, if not all, of the fitups in this case constitute excluded personal property." 13 N.J. Tax at 328. The court therefore reversed and remanded for reconsideration. *Id.* at 329. Thus, GM clearly prevailed in the Appellate Division, and respondents' contrary claim is itself "highly misleading."

longstanding precedents of this Court, no one has ever disputed (indeed, the courts below have assumed) that GM has made out a due process violation based on respondents' retaliation against it for challenging prior tax assessments. It is plainly unconstitutional for a municipality and its taxing officials to discriminate and retaliate against a taxpayer for invoking its right to appeal property tax assessments, and respondents do not contend otherwise. See *Allegheny Pittsburgh Coal Co.* v. *County Comm'n of Webster County*, 488 U.S. 336 (1989); *Blackledge* v. *Perry*, 417 U.S. 21 (1974); *Township of West Milford* v. *Van Decker*, 120 N.J. 354, 362-364, 576 A.2d 881, 885-886 (1990); *Baldwin Constr. Co.* v. *Essex County Bd. of Taxation*, 16 N.J. 329, 342, 108 A.2d 598, 604-605 (1954); *423 South Salina Street, Inc.* v. *City of Syracuse*, 68 N.Y.2d 474, 503 N.E.2d 63 (1986), cert. denied, 481 U.S. 1008 (1987).

2. GM now seeks redress for this gross constitutional violation. Under the New Jersey Supreme Court's decision in this case, however, GM is relegated to the state tax system to pursue its claim for relief. And, as we explained in the petition (at 12-19), the New Jersey tax system has three deficiencies, *each* of which renders the regime inadequate as a matter of federal law. *First*, as respondents expressly conceded below, the question in the state tax proceeding is whether the valuation number selected by the assessor fairly reflects the value of the taxpayer's property, *not* whether the assessor acted unconstitutionally in making the assessment. See Pet. 12-15. *Second*, the New Jersey statute provides that the taxpayer challenging a constitutional violation must satisfy a prohibitively high burden of proof. See Pet. 15. And *third*, New Jersey law does not provide for personal or punitive liability against an assessor or other tax official — even one who has engaged in intentionally and blatantly unconstitutional conduct — and therefore does not serve to preclude or deter repeated constitutional violations. See Pet. 16-19. Respondents assert that the first and second of these

points are inaccurate and that the third is irrelevant. Respondents plainly are incorrect on all three counts.

a. The sole object of the state tax regime is the "correction" of erroneous tax assessments. As the New Jersey Supreme Court itself observed below (Pet. App. 11a-12a), even in constitutional cases the only relief available in Tax Court is the "correct[ion] [of] an unconstitutional assessment," plus interest on any excess taxes collected.[5] And in determining whether a tax assessment is "correct," the Tax Court applies a so-called "zone of reasonableness" or "protective range," see N.J.S.A. § 54:51A-6, under which an assessment may not be "corrected" if it is within 15% of the actual taxable value of the subject property. See Pet. 4-5.

Respondents suggest, although they never affirmatively state,[6] that the "zone of reasonableness" would not apply to GM's case in the Tax Court. The New Jersey Supreme Court, however, never even hinted in its opinion below that GM would get any favorable treatment of its constitutional

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[5] Respondents cite a 1993 New Jersey statute that deleted the word "inferior" from the statutory description of the Tax Court and expanded the jurisdiction of that court (Br. in Opp. 19), but they fail to note that this statutory change is, as the Appellate Division found (Pet. App. 20a n.2), inapplicable to GM's case, which was pending when the statute was modified. Moreover, as the Appellate Division correctly noted (*ibid.*), this statutory change is irrelevant to the question of state court jurisdiction over Section 1983 actions presented by this case.

[6] Respondents quote from *Township of West Milford* v. *Van Decker*, 120 N.J. 354, 576 A.2d 881 (1990), but never actually concede that the holding of *Van Decker* would apply to GM's case in the Tax Court to preclude application of the "zone of reasonableness." In fact, as we demonstrate below (at page 6), *Van Decker* is distinguishable and the "zone of reasonableness" would apply to GM's case.

claim in this regard from the Tax Court.[7] Indeed, the court went to great lengths to explain how the usual procedures applicable in all tax cases would apply in GM's case and provide GM with an adequate remedy. Pet. App. 11a-13a.

The New Jersey Supreme Court's decision in *Township of West Milford* v. *Van Decker*, 120 N.J. 354, 576 A.2d 881 (1990), is not to the contrary. In that case, the township and its assessor had *no* authority to impose *any* new assessment at all on the taxpayer's property. 120 N.J. at 357, 364, 576 A.2d at 882, 886.[8] The New Jersey Supreme Court held that the statutory "zone of reasonableness" would not protect an assessment where there was no municipal authority to make *any* assessment. *Ibid.* In such cases, the actual amount of the assessment was irrelevant.

In this case, by contrast, GM concedes that the City of Linden has authority to impose an added assessment based on additions to GM's facility. GM anticipated that the added assessment would be approximately $1 million. Instead, the added assessment was over $17 million. Thus, the amount of the assessment is at issue in the Tax Court, and the "zone of reasonableness" will apply, as it does in all cases in which the actual *amount* of an assessment is at issue, as opposed to the municipality's authority to make any assessment at all.

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[7] No one — and particularly not respondents — has ever suggested in the Tax Court proceedings involving GM's challenge to the 1986 added assessment, or elsewhere, that the "zone of reasonableness" might not apply to GM's challenge to that added assessment. Respondents apparently have crafted their argument carefully in this Court so as to preserve the claim in the Tax Court that the "zone of reasonableness" applies to GM's case.

[8] The township in *Van Decker* established an illegal "practice of reassessing only properties that were the subject of a recent sale while leaving undisturbed the appraised valuations of properties in the same class." 120 N.J. at 357, 576 A.2d at 882.

b. As for the extraordinarily high burden of proof imposed on taxpayers in the Tax Court, respondents argue that it will not apply in GM's case (Br. in Opp. 20-21). The New Jersey Supreme Court, however, has already held that it will apply (Pet. App. 12a): in the Tax Court, GM must "introduce evidence to overcome the presumptive validity of the assessment." And, as we have explained in the petition (at 5), GM faces a daunting task in trying to overcome this presumption. "The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be 'definite, positive and certain in quality and quantity to overcome the presumption.'" *Pantasote Co.* v. *City of Passaic*, 100 N.J. 408, 413, 495 A.2d 1308, 1310 (1985) (quoting *Aetna Life Ins. Co.* v. *Newark*, 10 N.J. 99, 105, 89 A.2d 385, 387 (1952)).

c. In advancing the spurious contentions that neither the "zone of reasonableness" nor the heightened burden of proof will apply to GM's case in the Tax Court, respondents' tactic is clear: they hope to defeat review by obscuring the meaning of New Jersey law. This stratagem should not succeed. We demonstrated in the petition (at 21) — and respondents do not deny — that features of the sort we describe are found in state tax regimes across the Nation. As a consequence, whether such tax schemes are "adequate" and therefore preclude recourse to Section 1983 is an important and recurring issue, which this Court left open in *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 115 S. Ct. 2351 (1995). Allowing a taxing jurisdiction to avoid review of this issue by the simple expedient of manufacturing a wholly chimerical dispute about the meaning of state law would assure the frustration of federal rights.

d. Finally, respondents declare it irrelevant that New Jersey does not provide for personal liability against tax assessors who maliciously and knowingly engage in unconstitutional acts; they maintain that a state remedy

necessarily is adequate so long as it provides for refunds. Br. in Opp. 11-18. The decisions they cite for this proposition, however, are simply not on point.

The recent state court decisions relied upon by respondents (Br. in Opp. 17-18) are inapplicable because the taxpayers in those cases did not seek damages for intentional constitutional violations by state tax officials. The decisions of this Court cited by respondents are equally off the mark:

- *Fair Assessment in Real Estate Ass'n* v. *McNary*, 454 U.S. 100 (1981), cited at Br. in Opp. 8-10, 12, expressly did *not* address the adequacy of the state remedy, and expressly *did* observe (with evident approval) that the state courts would entertain a Section 1983 action to redress constitutional violations almost identical to those alleged here. 454 U.S. at 106, 116-117.

- The Court held in *Rosewell* v. *LaSalle National Bank*, 450 U.S. 503 (1981), cited at Br. in Opp. 13-14, that a state system that failed to pay interest on refunds was adequate because Congress was aware when it passed the Tax Injunction Act that many "States did not pay interest on their refunds to taxpayers, following the then-familiar rule that interest in refund actions was recoverable only when expressly allowed by statute." 450 U.S. at 523. In contrast, we explained in the petition (at 18) that pre-Section 1983 law regarded the availability of an action against individual taxing officers as an important part of the adequate legal remedy that precluded injunctive relief. Respondents make no response.

- *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293 (1943), cited at Br. in Opp. 14-15, was an action for declaratory relief, did not involve a request for damages, and did not suggest that damages against individual taxing officials would be unavailable.

- *McKesson Corp.* v. *Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990), cited at Br. in Opp. 15, has nothing whatsoever to do with the issue in this case; it

addressed the question whether federal due process principles require states to refund unconstitutional taxes.

- Respondents read *National Private Truck Council* to hold that "a refund is an adequate legal remedy unless a state's tax authorities continue to impose the unconstitutional tax." Br. in Opp. 16. We explained in the petition (at 11), however, that *National Private Truck Council* had no occasion to address the nature of the adequacy requirement. Indeed, the taxpayer in *National Private Truck Council* sought only declaratory and injunctive relief, and the Court's decision rested in part on "principles of equitable restraint" that have no bearing here. 115 S. Ct. at 2356. In addition, as we already have explained, the pre-Section 1983 decisions upon which the Court principally relied in *National Private Truck Council* recognized the importance of actions against individual tax assessors; respondents make no response to this important point.

e. At the end of the day, respondents are left with the half-baked assertion that their adequacy principle might not preclude Section 1983 claims challenging discrimination on the basis of race or other impermissible factors. Br. in Opp. 21-22. But there is absolutely no reason to believe that this is so. In such a case the taxpayers could assert their constitutional claims in the Tax Court and (if the "zone of reasonableness" limit did not apply) could obtain a refund, just as GM can here. Under respondents' theory, that is the very definition of adequacy. See Br. in Opp. 11. The suggestion that the adequacy of the state remedy nevertheless somehow varies depending upon the nature of the taxpayer's constitutional claim is a wholly illogical one that finds no support in this Court's decisions.

Indeed, that respondents feel the need to float the possibility at all stands as a tacit and embarrassing admission that a state tax refund regime is *not* adequate, and is *not* a permissible substitute for Section 1983, when it fails to punish and deter intentional violations of the Constitution.

Because the New Jersey scheme plainly suffers from this defect, further review of this important issue is in order.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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